



**DEPARTMENT OF FAIR EMPLOYMENT
AND HOUSING**
ENFORCEMENT DIVISION
DIRECTIVE

**DIRECTIVE
NUMBER
216**

**DISTRIBUTION
DATE
October 1, 1998**

1. **SUBJECT:** REFERRAL OF EQUAL PAY CASES BETWEEN THE DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING AND THE DIVISION OF LABOR STANDARDS ENFORCEMENT
2. **PURPOSE:** To set forth the procedures for the appropriate referral of individuals with sex-based wage discrimination claims to the Department of Industrial Relations, Division of Labor Standards Enforcement (DLSE) and to differentiate the jurisdictions of the DLSE and the Department of Fair Employment and Housing (DFEH).
3. **BACKGROUND:** DLSE and DFEH both administer and enforce laws which prohibit wage discrimination on the basis of sex.

A. DFEH Statutes:

DFEH is responsible for enforcing the Fair Employment and Housing Act (FEHA), California Government Code section 12900 et seq., which prohibits many forms of discrimination, including wage discrimination based on sex.

Government Code section 12940 provides, in part:

"It shall be an unlawful employment practice, unless based on a bona fide occupational qualification, or, except where based upon applicable security regulations established by the United States or the State of California:

(a) For an employer, because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, or sex of any person,...to discriminate against the person in compensation or in terms, conditions or privileges of employment." [emphasis added]

B. DLSE Statutes:

DLSE is responsible for administering and enforcing the provisions of the Labor Code which prohibit wage discrimination based on sex. Labor Code section 1197.5, commonly referred to as the Equal Pay Act, defines sex-based wage discrimination, prohibits such discrimination, and establishes the rights and duties of employees and employers in any situation in which sex-based wage discrimination is alleged and found to exist.

Labor Code section 1197.5, subdivision (a), provides, in part:

"(a) No employer shall pay any individual in the employer's employ at wage rates less than the rates paid to employees of the opposite sex in the same establishment for equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions, except where such payment is made pursuant to a seniority system, a merit system, a system which measures earnings by quantity or quality of production, or a differential based on any bona fide factor other than sex."

Any employer who violates subdivision (a) is liable to the employee for lost wages and interest and also for an additional amount equal to the lost wages in the form of liquidated damages.

C. Responsibilities of Each Department:

1) DFEH and DLSE Staff Responsibilities:

All professional staff in DFEH and DLSE and all other personnel whose duties may involve public contact are required to be familiar with the relevant statutory mandates and must be able to advise accurately any person contacting their offices of his/her rights and duties under these sections.

2) DLSE Procedural Instructions:

DLSE staff should note that no attempt is being made in this document to repeat previous instructive materials which have

been provided concerning the enforcement of Labor Code section 1197.5.

3) **DFEH Procedural Instructions:**

DFEH staff is should refer to Directive 215, "Complaints Alleging Pay Gender Discrimination in the Form of Pay Inequities," for instructions on handling cases of this nature.

4. **PROCEDURES FOR COOPERATION AND REFERRAL:**

The following procedures have been developed by DFEH and DLSE to promote cooperation between the agencies, avoid a duplication of effort, and provide guidance to staff in handling prospective DLSE claimants and/or DFEH complainants.

A. **General:**

Persons inquiring about sex-based wage discrimination should be given the opportunity, within the procedures of the relevant agency, to discuss their concerns with a member of the professional staff. The staff member should express the agency's willingness to accept and investigate the claim or complaint, and render an objective determination based on all of the available facts.

B. **Claimants Initially Contacting DLSE:**

- 1) If the claim is solely one of sex-based wage discrimination, DLSE will accept the claim and advise the claimant that he/she also has the option of filing with DFEH. DFEH-100-01 ("Equal Pay Cases") will be given to the claimant for reference.
- 2) If a sex-based wage discrimination claim is combined with other issues of alleged discrimination, the claimant will be advised that he/she has the following alternatives:
 - a) Requesting DLSE to handle the claim for sex-based wage discrimination. The claimant is responsible for contacting DFEH to file claims on issues other than wage discrimination; or
 - b) Filing all of his/her claims, including the claim for sex-based wage discrimination, with DFEH.

- 3) In instances of multiple claims of discrimination where the claimant selects DLSE as the agency to handle the sex-based wage discrimination claim, DLSE will proceed immediately with the claim, and refer the claimant to DFEH for handling of other issues.
- 4) In instances where the claimant selects DFEH as the agency to handle all multiple claims, no further action will be taken by DLSE.
- 5) If the issue is one of sex discrimination involving issues other than sex-based wage discrimination as defined by Labor Code section 1197.5, the claimant will be referred to DFEH. Examples would include alleged discrimination in hiring, promotions, seniority systems, training practices, or termination.

C. Complainants Initially Contacting DFEH:

At the conclusion of the DFEH intake interview, complainants initially contacting DFEH with issues which are jurisdictional with DFEH will be advised (where appropriate), of the avenue of redress with DLSE and given a copy of DFEH-100-01 ("Equal Pay"). DFEH will accept the complaint if that is desired by the complainant.

5. INTERAGENCY COOPERATION:

A. Authority for Sharing Information:

DLSE and DFEH recognize that each is a law enforcement agency for purposes of the California Information Practices Act and agree to share all information obtained in the investigation of matters regarding issues where both agencies have accepted complaints pursuant to the requirements of that Act.

B. Procedures for Sharing Information:

Upon request, each agency will make appropriate information available to the other. Requests will be made by, and responded to by, the person in charge of the respective offices and will be made in writing.

C. **Interpretation of This Directive:**

Questions regarding the interpretation of this Directive should be referred through appropriate channels to the Deputy Director Enforcement Division (DFEH) or the Deputy Chief (DLSE).

6. **APPROVAL:**

Nancy C. Gutierrez, Director

Date